

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 241 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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JIGAR ARVINDBHAI PATEL

Versus

STET OF GUJARAT

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Appearance:

MR BM MANGUKIYA for Petitioners

MR TRIVEDI, APP, for Respondent No. 1

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 15/07/1999

ORAL JUDGEMENT

1. Heard Mr. B.M. Mangukiya for the respondents and Mr. U.A.Trivedi, learned Additional Public Prosecutor for the respondent-State. Rule. Mr. Trivedi waives service of Rule.

2. This revision application arises out of a judgment and order rendered by the learned Additional City Sessions Judge (Court No.13) in Criminal Appeal

No.123 of 1998, arising out of the judgment and order rendered by the learned Metropolitan Magistrate, Court No.20, in Criminal Case No.340 of 1993.

3. The revisioners came to be convicted by learned Metropolitan Magistrate under Sections 323 and 324 of Indian Penal Code and Section 135 of the Bombay Police Act and sentenced them to undergo simple imprisonment for three months and to pay a fine of Rs.500/- for offence punishable under Section 323; to undergo simple imprisonment for six months and to pay a fine of Rs.1000/- for offence punishable under Section 324; and to undergo simple imprisonment for four months and to pay a fine of Rs.500/- for offence punishable under Section 135(1) of the Bombay Police Act. The said judgment and order was carried in appeal before the City Sessions Court by way of Criminal Appeal No.123 of 1998 and the learned City Sessions Judge (Court No.13), partly allowed the appeal and while confirming the convictions under Sections 323 and 324 of Indian Penal Code for all the accused and further confirming conviction under Section 135(1) of the Bombay Police Act in respect of accused No.1 and 3, i.e. present revisioners No.1 and 3, disposed of the appeal. The appeal was allowed only in respect of conviction under Section 135(1) of Bombay Police Act in respect of original respondent No.2. This judgment and order has given rise to the present revision application.

4. When the matter came up before this Court, the parties, i.e. original complainant, the injured witnesses and the revisioners appeared before this Court and stated that with the intervention of well wishers, they have settled their disputes and they went to compound the matter with the permission of the Court. Considering the provisions and considering that the compromise entered into between the parties was genuine and voluntary, this Court is inclined to grant the permission and, therefore, so far as the convictions under Sections 323 and 324 of Indian Penal Code read with Section 114 of I.P.C. are concerned, the convictions are set aside.

5. Mr. Mangukiya, learned advocate for the revisioners has drawn attention of this Court to the fact that though notification under Section 37 is produced on record, its due publication is not proved by the prosecution. He has also submitted that so far as revisioner Jigar is concerned, he is said to have been equipped with hockey only. Further, he submitted that if the whole incident is seen, it occurred all of a sudden

abruptly at an occasion where an earlier dispute was tried to be solved by negotiations. The incident has occurred at the heat of moment and now the dispute is also settled. Mr. Mangukiya, therefore, urged that when publication of the notification in the manner provided is not proved, the offence cannot be said to have been established.

6. Mr. Trivedi after going through the record accepts the position that there is no evidence to indicate publication of the notification on beat of drums as well as affixing in a conspicuous place as envisaged under the law. In the peculiar circumstances of the case, the argument advanced by Mr. Mangukiya needs to be accepted. The conviction of the revisioners, therefore, under Section 135 of the Bombay Police Act is hereby quashed and set aside. The fine, if any, paid by he accused revisioners be refunded to them. Revision application is allowed accordingly. Rule is made absolute.

[ A.L. DAVE, J. ]

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